

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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NORMAN SHAW, *et al.*,

Plaintiffs,

v.

SCOTT DAVIS, *et al.*,

Defendants.

Case No. 3:18-cv-0551-MMD-CLB

**ORDER DIRECTING DEFENDANTS
TO SERVE OUTSTANDING
VERIFICATIONS**

This case involves an inmate civil rights action brought by five plaintiffs against various defendants. Due to the number of parties and claims, discovery in this matter has proved to be more complex and difficult. As such, the Court took an active role in the discovery process to assist the parties and streamline the litigation. In total, the Court held four case management conferences (“CMC”) over the course of this litigation. (See ECF Nos. 101, 135, 145, & 151.) Various discovery issues were addressed at the CMCs. Several issues could not be resolved after several attempts by the parties to meet and confer.

At the last CMC held on April 28, 2021, the Court was informed that several sets of interrogatory responses provided by Defendants did not contain the proper verification. (ECF No. 151.) Specifically, the parties confirmed that verifications were not provided for Discovery Items 5, 17, 22, 30, 31, 46, 48, and 55.¹ Defendants agreed to provide these verifications by no later than May 5, 2021. It appears that verifications have still not been provided to several of the items listed. (ECF No. 153 at 27.)

¹ These numbers refer to the number assigned to each discovery document on a discovery table developed and used by Plaintiff, Defendants, and the Court throughout this case. (ECF No. 153-1 at 1-4.)

1 On August 16, 2021, Defendants appear to have filed proper verifications to
2 Discovery Items 17, 30, and 31. (ECF No. 173.) However, it appears verifications remain
3 outstanding as to Items 5, 22, 46, 48, and 55. Defendants seem to be under the
4 impression that verifications to interrogatories are of little importance or are ministerial in
5 nature. However, this impression is false.

6 “Each interrogatory must, to the extent it is not objected to, be answered
7 separately and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3). “An answer to an
8 interrogatory may be used to the extent allowed by the Federal Rules of Evidence.” Fed.
9 R. Civ. P. 33(c). “The person who makes the answers must sign them, and the attorney
10 who objects must sign any objections.” Fed. R. Civ. P. 33(b)(5). Such “requirement is
11 critical because interrogatories serve not only as a discovery device but as a means of
12 producing admissible evidence; there is no better example of an admission of a party
13 opponent, which is admissible because it is not hearsay, than an answer to an
14 interrogatory.” *Huthnance v. D.C.*, 255 F.R.D. 297, 300 (D. D.C. 2008). Without the
15 verification, the answers have no evidentiary value. *Spence v. Kaur*, No. 2:16-cv-1828-
16 TLN-KJN-P, 2020 WL 7406294, at *9 (E.D. Cal. Dec. 17, 2020). Therefore, verifications
17 are not only required by the rules, but serve an important and significant function in the
18 discovery and trial process. The failure to provide proper verifications may result in the
19 discovery responses being stricken.

20 Therefore, the Court will provide Defendants with one final opportunity to cure the
21 continued failure to properly verify their responses to discovery requests in this case.

22 **IT IS ORDERED** that Defendants will serve proper verifications to Discovery Sets
23 5, 22, 46, 48, and 55 within 30 days of the date of this order, by filing these verifications
24 on the Court’s CM/ECF filing system.

25 **IT IS FURTHER ORDERED** that, when providing this filing, Defendants will
26 properly identify each verification by indicating which discovery responses (or set of
27 discovery responses) the verification is being provided for to ensure that the Court and
28 Plaintiffs can easily determine if this order has been complied with.

1 **IT IS FURTHER ORDERED** that, if Defendants fail to comply with this order, the
2 Court will likely strike the unverified responses and Defendants will be precluded from
3 relying upon those answers in the balance of this litigation, including motion practice and
4 trial pursuant to Federal Rule of Civil Procedure 37.

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6 **DATE:** August 24, 2021

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UNITED STATES MAGISTRATE JUDGE